

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Implementation of Section 309(j) of the)
 Communications Act Competitive Bidding)

PP Docket No. 93-253

COMMENTS OF
RAM MOBILE DATA USA LIMITED PARTNERSHIP

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following comments with respect to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. RMD's comments focus upon the tentative conclusion stated in the Notice that frequencies being licensed for wide area SMR systems in the Commission's 900 MHz "Phase II" licensing proceeding (PR Docket No. 89-553) should be subject to auction.¹ To the extent that such a conclusion is justified, it should be applied to the 900 MHz "Phase II" frequencies to be used by applicants who file for 900 MHz SMR frequencies for the first time in Phase II, rather than to existing DFA licensees seeking expansion channels, as contemplated in the Commission's separate 900 MHz Phase II proceeding.²

There is a strong interest in assuring that DFA licensees have the ability to expand their existing systems and that such system expansion will not be subject to competing applications from those who have not made the investment in the initial Phase I licensing areas.³ Following through with the approach developed in the Phase II proceeding is consistent with both the Budget Act⁴ and its legislative history, which make clear the Congressional mandate that the Commission should first seek "to avoid mutual exclusivity" by the application of "threshold qualifications, service regulations, and other means." 47 U.S.C. § 309(j)(6)(E). The Budget Act does not, and was not intended to, alter or supersede the process by which the Commission establishes threshold licensing qualifications and service criteria to avoid mutual exclusivity. To the contrary, the House Report on the bill states that the use of such criteria "should continue to be used when feasible and

¹ See Notice at ¶ 138 n.134.

² See First Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 89-553, 8 FCC Rcd. 1469 (1993) (the "Further Notice").

³ Further NPRM, 8 FCC Rcd. at 1476 and n.67.

⁴ Omnibus Budget Reconciliation Act of 1993 (the "Budget Act").

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appropriate.”⁵ Furthermore, the Budget Act flatly prohibits the Commission from making licensing decisions based upon budget or revenue considerations. 47 U.S.C. § 309(j)(7).

It is noteworthy, moreover, that specialized mobile radio (“SMR”) was not among the list of services listed in the House Report,⁶ and cross-referenced in Conference Committee statement, for which Congress envisioned auctions to be applicable. Indeed, the SMR service was specifically cited by the Senate as an example of a service in which it was anticipated that there would be non-mutually exclusive applications that would not be subject to auction, particularly, one must assume, with respect to expansion of existing DFA systems.⁷

The public interest considerations involving the licensing of Phase II SMR service have been thoroughly debated in two notice and comment proceedings,⁸ and need not be repeated or redebated again. This process has yielded a proposal, which enjoys widespread industry support, that will insure those that made the investment in the initial fragmentary DFA markets the ability to protect and expand their systems to natural market boundaries, without being subject to mutually exclusive applications. As more thoroughly explored in pleadings already on file in the docket, the proposal is very much akin to the Commission’s recent decision to give local broadcasters a first opportunity to implement advanced television service⁹. In addition, although a text of the decision has not been released, giving Phase I DFA licensees an opportunity to expand their systems also appears to be consistent with the Commission’s recently announced decision to allow existing private carrier paging systems to secure channel exclusivity on a regional or nationwide basis.¹⁰

The establishment of threshold qualifications for the award of licenses that avoid mutual exclusivity is also consistent with other procedures employed by the

⁵ H.R. Rep. No. 103-111, 103d Cong., 1st Sess. 258-259 (1993).

⁶ H.R. Rep. No. 103-111 at 263.

⁷ H.R. Rep. No. 102-213, 103d Cong., 1st Sess. (1993) (“Conference Report”), at 481.

⁸ See Further Notice, Notice of Proposed Rule Making, PR Docket No. 89-553, 4 FCC Rcd. 8673 (1989).

⁹ See Second Report and Order and Further Notice of Proposed Rule Making, Advanced Television Systems (“ATV”), 7 FCC Rcd. 3340, 3342 (1992).

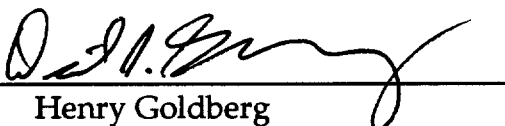
¹⁰ See News Release, Rep. No. DC-2519, PR Docket 93-35, Oct. 21, 1993; see also Notice of Proposed Rule Making, PR Docket 93-35, FCC 93-101 (“In our view, it is appropriate to grant exclusivity to licensees who are already operating systems that meet our criteria for exclusivity. This does not constitute a preference at all, but simply reflects the investment that these licensees have already made at 900 MHz when other potential applicants chose not to”).

Private Radio Bureau in SMR licensing, waiting lists and finder's preferences, each of which is expressly recognized in the Notice as an appropriate alternative to mutual exclusivity and auctions.¹¹

For a variety of reasons, the completion of the "Phase II" licensing process for 900 MHz SMR systems that began in 1986 has been held in limbo for seven years. With the work of the Commission in issuing the Further Notice earlier this year and the coalescence of industry support for RMD's Modified MTA proposal, there is now finally a ray of hope for a workable solution that avoids the problems of mutual exclusivity for all of those who, by their efforts in implementing Phase I systems, have demonstrated their commitment to developing this band. RMD urges that this solution be given a chance to work by the completion of the Phase II docket, with auctions considered, as Congress intended, only if such mutual exclusivity cannot be avoided.

Respectfully submitted,

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¹¹ See Notice at ¶¶ 138-139 and ns.132, 139.